

REMARKS

Claims 1-12, 21-23 and 26-28 are currently pending in this application. By this amendment, Claims 1, 6, 7, 21 and 22 have been amended and Claims 24-25 have been canceled. No new matter has been added to this application by this amendment. In view of the amendments above and the remarks to follow, reconsideration and allowance of this application are respectfully requested.

In the Office Action mailed March 30, 2007, the title of the application was objected to as not being descriptive. Applicants have amended the title of the application to be more descriptive, i.e., the title has been amended to recite “Surgical Stapling Device With Visual Indicator.”

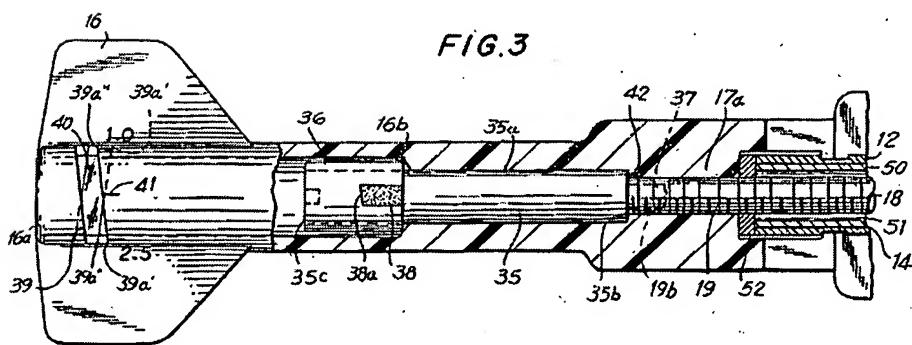
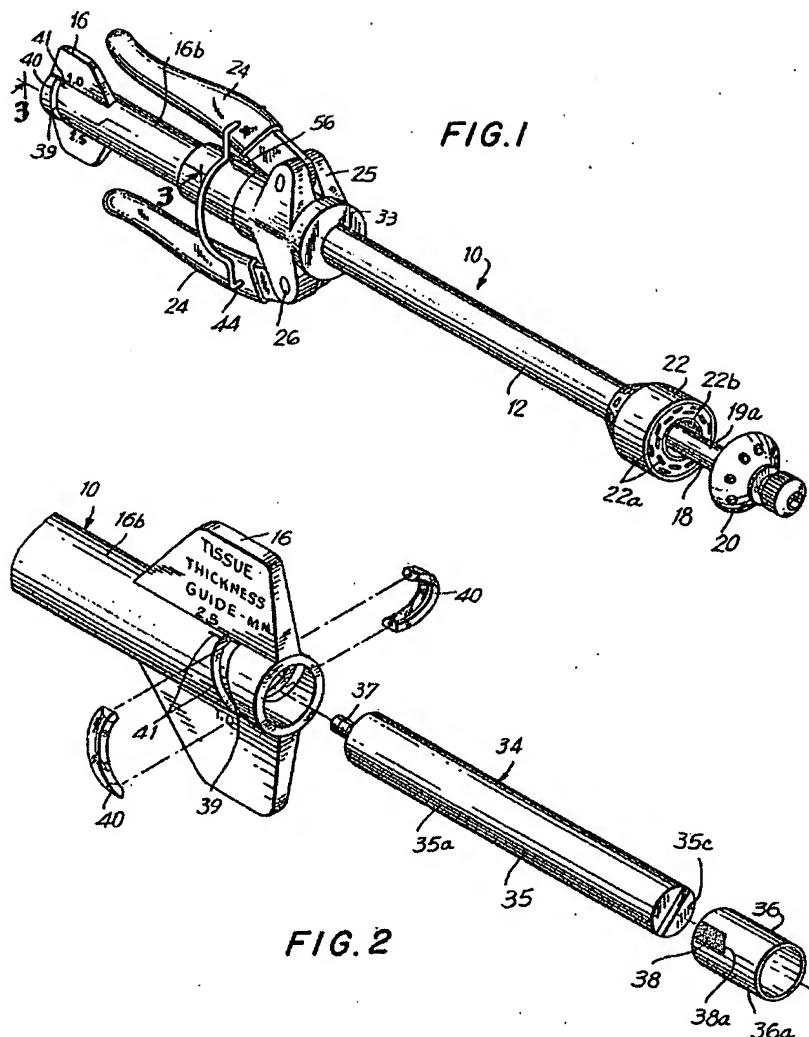
In the Office Action, Claims 1 and 21 were rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over Claims 15 and 18 of U.S. Patent No. 6,945,444 (“444 patent”). Applicants respectfully traverse this rejection. It is respectfully submitted that the ‘444 patent does not claim a bulbous indicator. As recited in Claims 15 and 18 of the ‘444 patent, the indicator includes a rotatable disc. Since a bulbous indicator is not claimed in the ‘444 patent, such as recited in Claims 1 and 21, Applicants respectfully request that the rejection of Claims 1 and 21 under the judicially created doctrine of obviousness-type double patenting over Claims 15 and 18 of the ‘444 patent be withdrawn.

In the Office Action, Claims 1-12 were rejected under 35 U.S.C. §112, second paragraph, as being indefinite because the recitation “the cartridge assembly” in Claim 1 lacked antecedent basis. Line 9 of Claim 1 has been amended to delete the recitation “cartridge assembly” and insert the recitation “shell assembly.” The recitation “shell assembly” has antecedent basis in

line 4 of Claim 1.

In the Office Action, Claims 1-5, 9, 12, 21, 22, 24 and 26-28 were rejected under 35 U.S.C. §102(b) over U.S. Patent No. 4,379,457 to Gravener et al. (“Gravener”). Gravener et al. disclose a surgical stapler 102 shown in FIGS. 1-3 reproduced below which includes an elongated tubular body 12, an anvil assembly 20, and a cartridge assembly 22. A central rod 18 is located within a bore of body 12 and extends into a bore 17 of wing nut 16. Anvil assembly 20 is supported on a distal end of central rod 18. A pair of windows 39 are provided on opposite sides of wing nut 16. An indicator 34, which can be integral with central rod 18, includes an indicator screw 35 and an indicator sleeve 36 and is located within bore 17 of wing nut 16. Indicator sleeve 36 includes indicator markings 38 which are positioned adjacent the distal end of indicator sleeve 36 and provided with a readily visible color. The indicator markings 38 are visible through windows 39 when the spacing between the anvil and cartridge assemblies are within the range of generally suitable spacings.

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Claim 1, as amended, recites a surgical stapling device including, *inter alia*, an indicator having a bulbous shape "...extending outwardly from a top surface of the body [of the handle

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assembly] such that the bulbous indicator is viewable from above and opposite sides of the device.” Applicants respectfully submit that Gravener fails to disclose a stapling device including an indicator such as recited in Claim 1. More specifically, Gravener’s indicator includes a cylindrical member positioned within a tubular body 12 of a stapler 10. Gravener does not disclose a bulbous indicator extending outwardly from a top surface of the stapler body as recited in Claim 1. As such, Applicants believe that Claim 1 is patentable over Gravener and is in condition for allowance.

Claims 2-5, 9 and 12 depend either directly or indirectly from Claim 1. For at least the reasons discussed above with respect to Claim 1, Applicants believe that Claims 2-5, 9 and 12 are also in condition for allowance.

In the Office Action, Claim 25 was objected to as being dependent on a rejected base claim (Claims 21 and 24), but was indicated to be allowable if rewritten in independent form. Claim 21 has been rewritten to include the features of Claims 24 and 25. Thus, Applicants believe that Claim 21 is in condition for allowance.

Claims 22, 23 and 26-28 depend from Claim 21. For at least the reason discussed above with respect to Claim 21, Applicants believe that Claims 22 and 26-28 are also in condition for allowance.

In the Office Action, Claims 1, 2 and 21-23 were rejected under 35 U.S.C. §103(a) over U.S. Patent No. 5,275,322 to Brinkerhoff et al. (“Brinkerhoff”). With regards to Claim 1, the Examiner concedes that Brinkerhoff does not show an indicator having a bulbous shape. Despite this concession, the Examiner states that “It would have been an obvious matter of design choice to modify the indicator window (84) of Brinkerhoff et al since applicant has not disclosed that

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having a bulbous or dome shaped indicator solves any stated problem or is for any particular purpose and it appears that the invention would perform equally well with either design choice."

Although Applicants respectfully disagree with the Examiner's rejection of Claim 1 in view of Brinkerhoff, Claim 1 has been amended to recite that the bulbous indicator extends outwardly from a top surface of the body of the handle assembly such that the bulbous indicator is viewable from above and opposite sides of the device. As discussed above, such a feature of the indicator, as conceded by the Examiner, is not taught by Brinkerhoff and provides operational advantages to the device recited in Claim 1. For example, the configuration of the bulbous indicator facilitates easy visualization by a surgeon. Thus, Applicants believe that Claim 1 is patentable over Brinkerhoff and is in condition for allowance.

Claim 2 depends from Claim 1. For at least the reasons discussed above with respect to Claim 1, *inter alia*, Applicants believe that Claim 2 is also in condition for allowance.

As discussed above, Claim 21 has been amended to include the details of Claims 24 and 25. Claim 25 was indicated by the Examiner to include allowable subject matter. Accordingly, Applicants believe that Claims 21-23 which depend from Claim 21 are also in condition for allowance.

In the Office Action, Claims 6-8, 10 and 11 were indicated to be allowable if rewritten in independent form. Claims 6 and 7 have been rewritten in independent form. Claims 8, 10 and 11 depend from Claim 7. Accordingly, Applicants believe that Claims 6-8, 10 and 11 are in condition for allowance.

In view of the foregoing amendments and remarks, it is respectfully submitted that all claims pending in the application, namely claims 1-12, 21-23 and 26-28, are in condition for

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allowance. Accordingly, early and favorable reconsideration of this application is respectfully requested. Should the Examiner feel that a telephone or personal interview may facilitate resolution of any remaining matters, he is respectfully requested to contact Applicant's attorney at the number indicated below.

Respectfully submitted,

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